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REISSUE LITIGATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Patent Application  
For PATENT NO. 5,711,100

WILLIAM A. ELMER

Serial No. 74,598

Filing Date: June 14, 1993

For: VEHICLE ADVERTISING  
SIGN, SYSTEM AND  
METHOD

DECLARATION OF  
TRACY CASSEL

Reissue file: 10/098648

I, Tracy Cassel, declare as follows:

1. I am over the age of 18 and am competent to testify. The matters set forth herein are based upon my own personal knowledge.
2. I am a resident of the state of Washington.
3. I am the owner and president of AutoSox USA, Inc. d/b/a. Cassel Promotions located at 130 S. Division, Spokane, Washington 99202.
4. I am very familiar with products supplied to the pizza industry and specifically have knowledge regarding the concepts, functions and designs of car-top vehicle advertising signs.

5. In 1987, I founded AutoSox USA, along with my brother Sam Cassel, and have been a supplier and manufacturer of vehicle car top advertising signs to the pizza business, as well as other industries, since that time. Our first vehicle advertising sign was called an "AutoSox Windsock" that mounted to the roof of the car.

6. In 1989, AutoSox began manufacturing its product known as the AutoAngle, which was a triangle shaped vehicle advertising sign with sides, ends and base forming an enclosed hollow bodied advertising member. The base and top were made of metal and the sides were plastic. To the best of my recollection, the AutoAngle sign was displayed at the Pizza Expo in Orlando, Florida September 5<sup>th</sup>-8<sup>th</sup> 1989.

7. This product was specifically designed to utilize both our window mount device or in the alternative, "round base" magnets, which are commonly known as RB-80 magnets. (See Exhibit A: Photograph of AutoAngle with magnets; see also Declaration of Jack Nellessen regarding round base magnets). These signs were sold to Domino's Pizza franchisees.

8. RB-80 magnets are stock item magnets that can be purchased via catalogs. (See Declaration of Jack Nellessen; see also J. Christopher Lynch Declaration.) To the best of my recollection, we purchased the stock RB-80 ceramic magnets from Adams Magnetics, California Division or Master Magnetics in Castle Rock, Colorado.

9. RB-80 magnets have dish-shaped housing with a magnetic member inside each housing having an edge extended below magnetic member. The reason there is a dish shaped housing is to house a fragile circular ceramic magnet, which is glued to the inside of the housing. The reason there is an edge extending below the magnet member is to prevent the ceramic magnet from coming in direct contact with the metal surface and prevent the ceramic magnet from breaking.

10. I have reviewed U.S. Patent No. 5, 711, 100 and the language in the patent in regards to the claims and description of the magnet, which is describing nothing more than a stock RB-80 magnet or some other stock RB magnet that have been used for years, and which my company has also used. That magnet was not invented by Mr. Elmer and does not appear to have been disclosed by Mr. Elmer as something that he in fact did not invent.

11. My company's AutoAngle sign also utilized a 1/2" section of a small rubber hose used as a washer between each magnet and the sign to avoid metal on metal and act as a means for the plastic coated RB-80 magnets to adjust to various curves of vehicle roof models. This provided the obvious and necessary flexibility needed for vehicle advertising signs.

12. In 1991, my company began fabricating the AutoAngle made out of plastic. (See Exhibit B: 1992 Publication showing the plastic AutoAngle) This vehicle advertising sign also had the choice of magnets or window mounting. This revised AutoAngle model, in addition to switching to formed plastic PVC, also switched from using the 1/2" hose section to using a rubber washer that we purchased from our distributor Radar Electric in Spokane, Washington. This again is the same concept as the "flexible sleeve concept" that is described in U.S. Patent 5, 711, 100.

13. This flexible sleeve concept is nothing new and is prior art that Mr. Elmer did not disclose in his patent; not only from use by our company but also by several of the other leading vehicle car top sign companies. (See other Declarations filed with this Protest) It is my belief and understanding that Mr. Elmer has used a stock catalog rubber grommet and that is what he described in patent 5,711,100 as a "flexible sleeve." (See Exhibit C) This is information seemingly not disclosed to the USPTO by Mr. Elmer.

14. As many people know, the basic functions of a rubber washer/grommet since it's inception, has been to keep the combined use of products from rubbing together as well as a means for pivoting or adjustment. Rubber washers and rubber grommets have been used for years for this function, and used on car top vehicle advertising signs for years prior to Mr. Elmer's patent application in June 1993.


15. Mr. Elmer's company, HTH, Inc., has been a supplier to the pizza industry of various products, including car top vehicle advertising signs. Mr. Elmer and I have attended the same tradeshow over the years, and our companies have advertised in the same pizza industry magazines and publications prior to the time Mr. Elmer filed his patent application on June 14, 1993. (See Exhibit E) He has had knowledge of my company and its products for years.

16. It is my belief that Mr. Elmer is now improperly attempting to introduce new claims in the Reissue application and/or broaden the claims. Additionally, the new claims should fail because of prior art that should preclude their issuance.

17. This is Reissue was filed by Mr. Elmer after he initiated litigation in Florida for alleged patent infringement against my company. After we filed our Answer and Counterclaims alleging invalidity, and after providing information to Mr. Elmer with information regarding his seemingly intentional failure to provide known prior art to the USPTO office, then and only then did he apply for reissue. (See Exhibit D) It is my opinion that the totality of the prior art should make his original patent fall and the reissue application should be denied.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

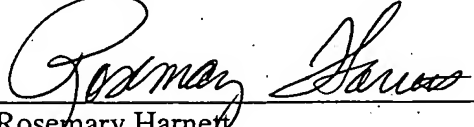
EXECUTED this 1 day of November, 2002 at 4:15 pm.

  
TRACY CASSEL

CERTIFICATE OF MAILING

I hereby certify that this DECLARATION OF TRACY CASSEL is being deposited with the United States Postal Service as Express Mail on the 1<sup>st</sup> day of November, 2002, in an envelope addressed to the following:

- and
- (1) The Assistant Commissioner for Patents, BOX DAC, Washington, D.C. 20231,
  - (2) Mr. Herbert L. Allen, Allen, Dyer, Doppelt, Franjola & Milbrath, P.A.  
255 South Orange Avenue, Suite 1401, Orlando, FL 32802-3791  
Attorneys for William A. Elmer, Applicant

  
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Rosemary Harnett